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Legal Advice

THE period of speculation is over. The LORD CHANCELLOR announced last week that he had accepted the plan of the Council of The Law Society for providing a special legal advice service through practising members of the profession instead of adhering to the plan originally proposed in the Legal Aid and Advice Act, 1949, whereby salaried solicitors employed whole-time for the purpose would operate a national system of legal advice. The Lord Chancellor's statement is set out more fully at p. 457, *post*. We welcome this decision wholeheartedly and congratulate the Council on their success which, in our opinion, is in the interests both of those who seek legal advice and of those who are to give it. There are several important points which should be stressed. First, the profession is not yet committed. The Council are in the process of consulting solicitors generally upon their proposals and we understand that there will be plenty of opportunity for discussion before any commitment is made. Secondly, even if the profession as a whole accepts the proposals, there will be no obligation to join the legal advice panel, just as no one is obliged to join the legal aid panels. Thirdly, it is intended that most of those who seek advice should pay for it themselves, but the Government will be prepared to authorise payment out of the Legal Aid Fund of the fixed fee for advice in the case of those members of the public whose means are below certain limits. Neither the fee nor the limits have been decided. These proposals are intended to meet the needs of a wider section of the public than that envisaged by s. 7 of the 1949 Act, namely persons "who cannot afford to obtain legal advice in the ordinary way." The advantage of this scheme is that anyone will know he can obtain expert advice on legal problems at an early stage without necessarily being committed to an expense which he may not be able to afford. In addition, those within the contemplation of s. 7 of the 1949 Act will be able to obtain advice from exactly the same source. Naturally, our final judgment must be suspended until the details, which we eagerly await, are known.

Raising the Limits ?

WE admit we are surprised that the Government have decided to extend the scope of legal aid but we are certainly very pleased. We had thought that the promised increase in the costs payable on legal aid, defence and appeal aid certificates would have exhausted the available funds; we were too pessimistic. The Lord Chancellor's Advisory Committee devote a large part of their comments and recommendations, which are published with the Council's Annual

CONTENTS

Report on the Legal Aid Scheme, to considering the financial limits of the scheme. The Assessment of Resources Regulations have remained unchanged since 1950, whereas in the year 1957–58 wages and prices rose yet again and put more litigants outside the financial limits—not, of course, because their real wages had risen but only because of the fall in the value of money. The committee take the view that after thirteen years of rising prices the scheme no longer adequately covers the section of the community, regarded in terms of income groups, which the Rushcliffe Committee intended. They think that the lower limit for free legal aid should be increased from £156 disposable income to £208 and that the whole of any reasonable rent payable should be allowed in arriving at the figure of disposable income. This last point has become of particular importance since the Rent Act was passed. The committee suggest that the upper limit of disposable income be increased from £420 to £600. In order partly to offset the larger influx of litigants into the Divorce Department which would result from amending the regulations on these lines, the committee suggest that only those whose contributions are nil should have their cases assigned to the Department. The committee calculate that these changes would cost £350,000 gross, and about half that amount after allowing for costs recovered. In view of the fact that the number of cases closed has again exceeded new cases and that the small increase in new cases is accounted for by the extension of the scheme to the county courts and has been much less than expected, and provided that the Government are still in an expansive mood, these arguments are well worth considering. We hope, however, that the claims of civil proceedings before the magistrates are not being forgotten.

Children and Young Persons

WE enthusiastically underline the advice which the editor of the *Law Society's Gazette* has given in the June issue not to overlook the Appendix to the Annual Report of the Council of The Law Society, which by now should be in the hands of all members. The Appendix contains several proposals for law reform which are argued with considerable skill and clearly based on experience. The largest item is the evidence which the Council have submitted to the Ingleby Committee on Children and Young Persons, and we are very pleased to see that the Council have stressed the need to distinguish between dealing with juveniles in their own interests and first establishing their guilt according to law. It is obviously easier for children to escape legal liability for their actions because of the rules governing criminal intent, but this does not make it any less necessary to do something about it. For this reason we are pleased that the Council approve the practice which has been followed in Liverpool for some time past of increasing the number of police cautions, which are particularly valuable where moral liability is clear but legal liability is doubtful. We also applaud the proposal of the Council that there should be a clear statutory and practical distinction between children accused of crimes and those in need of care and protection. We doubt, however, whether it is necessary to go to the length of requiring quarter sessions to constitute an equivalent to juvenile courts; it is not common for children, at any rate, to come before quarter sessions, and we think that any special arrangements for dealing with them ought to be left to the good sense of quarter sessions and not prescribed by statute. Finally, among the many very sensible proposals we are pleased to see one in favour of conditional or suspended sentences. The type of sentence which the Council have in mind is one whereby a juvenile offender would spend the first seven or fourteen days in the institution to which he has been sentenced, and would then be released on the strict condition that, if he is of good behaviour for the remainder of his sentence, he would not need to return. The whole of this part of the Appendix is well worth reading, but as in due course the Ingleby Committee will report we do not propose at this stage to make any detailed examination of the evidence.

Examining Justices

WE support the view of the Council that the difficulties which arise from the publicity which surrounds the taking of depositions can be simply solved without violating any fundamental principle. The Council propose that, while proceedings before examining justices should continue to be held generally in public, the solution to the problem lies in a prohibition of the publication of any particulars, except the names, addresses and occupations of the prosecutor, the accused and the witnesses, the charges against the accused and the decision of the examining justices. This prohibition would be removed as of right if the accused were discharged or if the accused at any stage during the proceedings were to request that the Press be free to publish their reports. We hope that the Departmental Committee will take the same view as the Council.

Crime May Pay

A FORTNIGHT ago we reported that the Government had decided to bring into operation ss. 21–23 of the Legal Aid and Advice Act, 1949, and the Council have now published the draft scales of fees which they suggest should apply on legal aid, defence and appeal aid certificates and in appeals before the Court of Criminal Appeal. If these scales are accepted and sensibly applied in practice, we do not think that any solicitor would have any cause to complain. For example, the highest scale for a case at quarter sessions or assizes provides for a fee of between 50 and 300 guineas for preparing for trial and between 8 and 12 guineas per day for attending court with counsel, as well as several other items. We must stress that this is only a draft scale, that the LORD CHANCELLOR has not accepted it and that it is very likely that we shall all soon wake up. In the meantime let us enjoy the dream of our crime subsidising our conveyancing.

After Gourley

IN another part of the Appendix the Council bear down somewhat forcibly on those who, for one reason or another and from one angle or another, have attacked the decision of the House of Lords in *British Transport Commission* v. *Gourley* [1956] A.C. 185. We agree that the decision is logically unassailable but we must admit that it is often a dreadful nuisance. Incidentally, there seems to be some controversy about whether it applies to special damages consisting of actual losses of earnings as well as to general damages for future losses: we see no reason why it does not. We are somewhat perturbed, entirely from the practical standpoint, by the proposal which the Council make in their memorandum to the sub-committee of the Law Reform Committee whereby the assessment of damages based on loss

of earnings should be divided into two stages : while the court should in the first instance determine the issue of liability and, subject thereto, the gross damages, the proposal is that the case should then be referred to an official assessor to determine the net amount having regard to the plaintiff's present and prospective tax position. While we agree that in a high percentage of cases the parties would reach agreement without having to go before the official assessor, we are reluctant to see another stage inserted into litigation and, worse still, a new corpus of case law on the subject. We still think that awards of general damages under, say, £5,000 could be made without taking into account the incidence of taxation. The remainder would be comparatively small in number and might have to be assessed in the way suggested by the Council.

Members

We feel bound to record for the first time since the war a fall in members of The Law Society—from 16,930 to 16,626. This reduction of 304 is almost wholly accounted for by the withdrawal from membership of salaried solicitors in the civil service, local government and elsewhere, who at present are unfairly treated for the purposes of taxation. As soon as the present Finance Bill is passed this unfairness will disappear and we hope that all those who have left will rejoin and that there will be many new recruits. It is not easy to think of any other professional body whose annual report is so packed with substance as this, and in our opinion the Council and the staff of the Society are entitled to ask for the fullest possible support. The annual general meeting will be held at 2 p.m. at the Society's Hall on Friday, 4th July. Those who disagree, and even those who agree, with what is contained in the report will on that day have their opportunity to speak, while all members should note that there is a contest for the vacancies in the London constituency.

Vicarious Liability

We were interested to read the case of *Parnaste* v. *O'Brien, Ceresne and Prusky* which was recently before the Ontario Court of Appeal ([1958] O.R. 85). O'Brien was employed as a full-time salesman and collector of accounts. He was required to supply his own means of transport and received from his employers, Messrs. Ceresne and Prusky, a weekly car allowance. While driving his car O'Brien was involved in an accident with a pedestrian, the plaintiff, shortly after leaving a house at which he had made a collection. His employers contended that they were not liable for the injury which resulted to the plaintiff as O'Brien's employment did not necessitate the use of a car and that he was therefore using it for his own convenience or, in the alternative, that he was not acting within the course of his employment at the time of the accident. The court did not share their view on either of these pleas and distinguished *Eggington* v. *Reader* [1936] 1 All E.R. 7, where the salesman was not employed full-time in so far as he was not prohibited from acting as the servant or agent for another person or company and was not required (as was O'Brien in the course of his collections) to call on any specified clients. The employers, the court found, could give the orders as to how O'Brien was to do his work within the hallowed principle enunciated by the House of Lords in *Mersey Docks and Harbour Board* v. *Coggins and Griffiths (Liverpool), Ltd.* [1947] A.C.1, and for this reason they were liable for his negligent act. As may be seen from such recent cases as *Gibb* v. *United Steel Companies, Ltd.* [1957] 2 All E.R. 110, the most important question to be answered in deciding whether an employer is vicariously liable for the acts of his servant is whether the employer could not only tell the employee what to do but also the way in which he was to do it. The Ontario Court of Appeal apparently thought that Messrs. Ceresne and Prusky had such a degree of control over the activities of their servant O'Brien.

TAXING THE DESERTED WIFE

One of the less amiable characteristics of Her Majesty's Commissioners of Inland Revenue is a tendency to hold on to money that comes into their hands long after they know they are not entitled to it. From time to time in magistrates' courts a woman is heard applying for a maintenance order made against her husband to be discharged, and the reason she gives for this quixotic move is often a pitiable one. Her husband has deserted her and left her to bring up the children. She obtains a maintenance order for, say, £5 a week, but the husband pays only when compelled by the court and often not then. Meantime, the children cannot live on air, and the wife takes the quickest course to obtaining sustenance for them by going out to work herself and leaving the children in a nursery or school.

She earns perhaps £5 per week and possibly thinks she has plumbed the depths of man's inhumanity to woman. Not at all. Enter Her Majesty's Commissioners of Inland Revenue. " You earn £5 a week and you get £5 from your husband. We assess your income at £10 per week and your tax will be deducted on this basis." " But," protests the unfortunate woman, " my husband isn't paying me. That's why I have to go out to work." " No matter," reply the Commissioners, " he will pay you some time and we shall take the money now from your earnings." " But he is £100 in arrears. I shall never get that." " The magistrates," the Commissioners assure her imperturbably, " will make an order and then he will pay."

Useless to explain that when a working man runs up a bill for anything approaching £100 he never pays it, and that the general practice of the courts in such cases is to remit the bulk of such arrears. The Commissioners have got the money and they stick to it. In despair, the wife asks the magistrates to discharge the order so that it can no longer form even a colourable pretext for excessive deduction of tax. Sooner or later the wife's health breaks down. She must turn then to National Assistance. There is no longer any order to make the husband share her burden and probably what grounds the woman had for obtaining one went with it when she asked for it to be discharged. There is no morality in the way the Commissioners behave in these cases and one wonders if there is any economic wisdom in it either. For a time they have the excess tax they have taken from a defenceless woman, but in the end the taxpayer has to support the whole family.

F. T. G.

Mr. Cyril C. Davies, Town Clerk of Pwllheli, has been appointed coroner for South Caernarvonshire in succession to the late Mr. Eirwyn Robyns-Owen.

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Common Law Commentary

PROBLEM OF INNOCENT MISREPRESENTATION

It should not be difficult to produce, if one had the time and inclination, an erudite and long-winded dissertation on misrepresentation and its relationship to other factors affecting the validity or enforceability of a contract. There are many cross-currents in this legal meeting-of-the-waters; fraud, mistake, breach of condition or warranty and the doctrine of *caveat emptor* can all be found swirling around the vortex; in this article a particular aspect only will be considered arising out of the case of *Long* v. *Lloyd*, *The Times*, 20th May, 1958.

The facts were simple, and such as commonly occur: the defendant offered a lorry for sale, describing it as "in exceptional condition" in an advertisement. The plaintiff inspected the lorry and on the occasion he was given by the defendant a number of statements about the lorry: that it would do 11 miles to the gallon, and that there was nothing wrong with it about which he had not told the plaintiff. The plaintiff bought it.

Two days later the plaintiff drove the lorry on a journey during which the dynamo ceased to function and other defects appeared such as an oil leak and a cracked wheel. The defendant said that the dynamo was all right when the lorry left him and offered to pay half the cost of a replacement, which the plaintiff accepted. A few days after this the lorry broke down on another journey, whereupon the plaintiff asked for the return of his money. A subsequent inspection by an expert produced a report that it was unroadworthy.

The judge at first instance, Glyn-Jones, J., found that the lorry had the defects complained of probably as a result of deterioration while out of use, and that the misrepresentations were made innocently. The plaintiff appealed.

What appears to have been the main argument was that which is to be found in some text-books and in some judgments by way of *dicta*: it concerns a criticism of the case of *Seddon* v. *North Eastern Salt Co., Ltd.* [1905] 1 Ch. 326, namely, that a contract cannot be rescinded for innocent misrepresentation once the property in the subject-matter has passed to the purchaser. Denning, L.J., as he then was, was a strong critic of the rule, and in *Leaf* v. *International Galleries* [1950] 2 K.B. 86 he went so far as to say (at p. 90) that *Seddon's* case was not good law and that the majority of the Court of Appeal in *Solle* v. *Butcher* [1950] 1 K.B. 671 had overruled it. A study of the latter case, however, does not confirm that statement concerning the overruling of this principle: the court consisted of Bucknill, Denning and Jenkins, L.JJ., of whom Bucknill, L.J., said nothing on this point and though he concurred in the terms of the order (p. 689) proposed by Denning, L.J., he did not say that he concurred with his lordship's statements on this principle. Jenkins, L.J., refused to regard *Angel* v. *Jay* [1911] 1 K.B. 666 as no longer good law (p. 703). *Angel* v. *Jay* expressed the same rule as *Seddon's* case.

Misrepresentations as terms of contract

We must now consider one of the cross-currents that so often appear with the main tide of misrepresentation, viz., the effect where the misrepresentation is embodied in the contract as a term of the contract. In that case we have the position that the term is either a condition or a warranty and that only for breach of condition can the contract be avoided, and then only in certain cases. Thus if the plaintiff has received a substantial benefit, or if the property in specific goods has passed to the buyer (Sale of Goods Act, 1893, s. 11 (1) (*c*)) or if the buyer has accepted the goods (s. 35) his right to avoid is lost notwithstanding a breach of condition.

Now the argument that arose in these circumstances—advanced in *Leaf* v. *International Galleries* and in the case under discussion (*Long* v. *Lloyd*)—is that as the term of the contract was a misrepresentation one ought to be able to avoid the contract on that ground. That argument has failed in both these cases on various grounds of which the most popular is that the breach of the term of the contract gives a right to damages at common law, and, as that is an adequate remedy, there is no justification for seeking the equitable remedy of rescission. In *Leaf* v. *International Galleries* the breach was probably a breach of warranty, so there was no right to avoid for breach of condition; but even if there had been the buyer in that case (who had bought a picture of Salisbury Cathedral wrongly ascribed to Constable) had had the goods for five years and so must be regarded as having "accepted" the goods. In *Long* v. *Lloyd* the buyer had accepted the lorry, for, among other facts, he had accepted a part-payment from the seller for the replacement dynamo.

Even where there is a breach of warranty only, so that rescission must depend on misrepresentation if it is to be available, it has been decided that that equitable remedy is merged in the common-law remedy of damages (*Pennsylvania S.S. Co.* v. *Compagnie Nationale de Navigation* [1936] W.N. 254).

It will be seen that *Seddon's* case is in fact in line with the principles applicable to breach of contract. If *Seddon's* case is wrong we get this situation: that if a contract is affected by innocent misrepresentation which does *not* form part of the contract then rescission can be had (subject to other exceptions which we have not considered here); but if the misrepresentation is part of the contract—and surely that extra fact ought to be something which gives the buyer some extra protection—rescission cannot be had. Only if the term is a condition and the goods have not been accepted can one get the contract set aside, and it must be rare for the defects to be discovered before acceptance.

Rescission: basic reform needed

Surely if reform is sought it ought not to be looked for in the overruling of *Seddon's* case and nothing more. Consideration should be given to the fundamental question: when and on what basic ground should the right of rescission be available? Whatever answer is found should apply to misrepresentation or breach of the contract. The "passing of property" is often a notional act and not a suitable criterion for judging this matter. Much better are the rules in equity which depend on the question whether any third party would be put in a worse position.

One of the reasons put forward in *Leaf* v. *International Galleries*, where five years had elapsed between the sale and the discovery that the buyer had never had a "Constable," as he thought he had, was that, although restitution was possible since the picture was then in as good a condition as five years before, there would be no finality to transactions if rescission were allowed in such a case. This may not appeal to everyone, for the fact remains that the purchaser did not get a thing of the quality purported to be sold, and if

restitution is possible, an order would not seem to be unjust subject to one consideration: change in money values. If there had been a substantial change a restitution order might produce hardship, though if the misrepresentation is a term of the contract, damages could be claimed and these would take account of the change in money values. For, although the general rule is that damages are assessed as at the date of the breach, since the real function of damages is to compensate for loss suffered, the court will take a different date if necessary so as to give proper compensation (*Kwei Tek Chao* v. *British Traders* [1954] 2 Q.B. 459).

The rules in this branch of the law are shackled by their historical growth: for the common law allowed rescission only for fraud, and its rules concerning breach of condition (which has not always carried the same meaning) were limited by concern with title. The latter is still important, but the conception is too simple and has not always been applied (see, for example, *Baldry* v. *Marshall, Ltd.* [1925] 1 K.B. 260; and *Varley* v. *Whipp* [1900] 1 Q.B. 513). More latitude in allowing rescission where the property has not substantially altered and where no third party rights are affected, or in allowing a longer time for a buyer to discover defects, notwithstanding a notional passing of property, or both, would, it is believed, produce better justice and be a curb on a too-ready ascription of good qualities to mediocre articles.

L. W. M.

THE RIGHT TO WATER

In these notes it is intended to discuss the nature of the rights enjoyed by the owner of property at common law or by general statute to obtain a water supply sufficient for the requirements of his property. Primarily we are thinking of a prospective owner of land on which he proposes to build a dwelling. In an urban area, there will probably be a piped supply available within a reasonable distance, but in some rural areas, in spite of Government grants to the local authority under the Rural Water Supplies and Sewerage Acts, the intending developer may still have to find his own supply from a stream or a well, or by coming to terms with some neighbour enjoying a private supply. In either case, complicated questions of law as to the rights and duties of the several parties may well arise—and often do in practice. We will deal first with the intending rural developer who must use some private source, there being no public source of water available to him.

Private sources

The law relating to the acquisition of private rights to water is almost entirely common law, and has been affected very little by statute. In the first place, the owner of land on the banks of a natural watercourse (or on one side only thereof) has a " natural " right—i.e., one which does not have to be established by grant or prescription, as for an easement—to receive a flow of water and to transmit it in its natural course. " By the general law applicable to running streams, every riparian owner has a right to what may be called the ordinary use of the water flowing past his land—for instance, to the reasonable use of the water for his domestic purposes and for his cattle " : *per* Lord Kingsdown in *Miner* v. *Gilmour* (1859), 12 Moo. P.C.C. 131. In this context, it seems that the term " domestic purposes " is to be construed somewhat more widely than it customarily is in connection with statutes dealing with the supply of water by statutory undertakers (see below). Thus, in *A.-G.* v. *G.E.R. Co.* (1870), 23 L.T. 344, it was said that the expression " domestic purposes " in this context " unquestionably would extend to culinary purposes; to the purposes of cleansing and washing, feeding and supplying the ordinary quantity of cattle, and so on " (*per* Romilly, M.R.). " Extraordinary " use of water by a riparian owner may also be justified if he does not thereby interfere with the legitimate use of the watercourse by other riparian owners, but if he does so interfere, his use of the water must be justifiable under some easement, acquired by grant or by prescription in accordance with the usual rules of the common law.

If the landowner is not fortunate enough to have his own source of water flowing past his premises, or if any such watercourse is not adequate or pure enough for his purposes, he may claim or acquire a right to take water from his neighbour's premises. The right to water is an easement, not a *profit à prendre*, but it may consist merely of going on another's land and drawing water from his well (*Polden* v. *Bastard* (1865), L.R. 1 Q.B. 156), or it may give a right to bring water in pipes across the servient tenement (*Beeston* v. *Weate* (1856), 5 E. & B. 986). In any event, whatever be the nature of the right, it is important to construe the grant or investigate the circumstances of the prescription carefully. " A grant of a watercourse in law, especially when coupled with other words, may mean any one of three things. It may mean the easement, or the right to the running of water; it may mean the channel, pipe or drain which contains the water, and it may mean the land over which the water flows " : *per* Bramwell, L.J., in *Brain* v. *Marfell* (1879), 41 L.T. 455.

However, although water is essential to the needs of every man, the law of this country does not recognise any right, apart from grant or prescription, for an owner of land to take water to his land from the nearest or most convenient source, akin to the rights of necessity recognised in the case of rights of way. The nearest that the law gets to this is the recognition of the right to water as one of those " quasi-easements " which, if previously enjoyed by a common owner in such circumstances that the enjoyment was continuous and reasonably necessary for the purposes of the " dominant tenement," will be allowed to pass by implied grant on a severance, in accordance with the doctrine of *Wheeldon* v. *Burrows* (1879), 12 Ch. D. 31. Further, if the owner of land sells off a parcel thereof for the specific purpose of building thereon, and it is known to both parties that there is no water supply on or available to the parcel sold, and such a supply is conveniently available on the parcel retained by the vendor, the vendor may not be able to refuse a right to use that water, on the old principle that a man will not be allowed to derogate from his grant. This principle has been applied to a number of rights, including rights of support (*N.E.R. Co.* v. *Elliott* (1860), 1 J. & H. 145), and rights to air in an undefined channel (*Aldin* v. *Latimer Clark Muirhead & Co.* [1894] 2 Ch. 437), but the writer has not been able to trace that it has been applied to a right to water, although there seems to be no logical impediment why it should not be so applied if all the facts can be established.

Where a right to water has been acquired by express or implied grant or by prescription, the common law will attach by implication (subject to any express provision to the contrary in the grant) ancillary rights reasonably necessary for the proper enjoyment of the right itself. Thus, the dominant owner may enter on the land of the servient tenement so as to repair the line of pipes through which the water flows, or so as to repair any necessary machinery, such as a pump, which he is entitled to use: *Pomfret* v. *Ricroft* (1669), 1 Saund. 321. Further, such an owner may prevent the servient owner from building so as to interfere with his rights of access to the pipe for the purpose of effecting repairs: *Goodhart* v. *Hyett* (1883), 25 Ch. D. 182. Similarly, in the case of a water main constructed by a local authority under the Public Health Acts, building over the main without the consent of the local authority will be restricted: Public Health Act, 1936, s. 119, applying s. 25, *ibid.*, and see *Abingdon Corporation* v. *James* [1940] Ch. 287.

If all else fails, and the landowner is unable to negotiate an easement with a neighbouring owner, and he cannot rely on any existing rights, he may be able to sink a well. The owner of any particular parcel has rights over his land *ad inferos*, and therefore he may abstract underground percolating water, even if he deprives adjoining landowners of a similar supply, and regardless of his motives in taking such action (*Bradford Corporation* v. *Pickles* [1895] A.C. 587), unless the underground water is flowing in a well defined and well-known channel (see discussion in the case of *Chasemore* v. *Richards* (1859), 7 H.L. Cas. 349). The only restrictions on this ancient right to take water from below the surface of one's land are those imposed by statute:—

(i) By s. 14 of the Water Act, 1945, the Minister of Housing and Local Government (in succession to the Minister of Health) may, for the protection of public water supplies or of water supplies used for industrial or other purposes, make an order prohibiting the construction of a "well, borehole or other work for the purpose of abstracting underground water," or the extension of any existing well, etc., within a defined area, unless a licence therefor has first been obtained from the Ministry. A copy of any draft order made under this section must be deposited with the local county council (Water Act, 1945, Sched. I, para. 12), and a notice of the making of the order must be sent to the local district council. A purchaser who anticipates having to sink a well on the land he is acquiring should therefore, before he enters into a binding contract, enquire as to the making of any such order of the local authority. It is suggested that an order restricting the sinking of wells under the section is probably registrable as a local land charge in Pt. IV of the register, but it does not seem that failure to register an order would render that order unenforceable against a purchaser for value. It should also be noted that under s. 7 of the Water Act, 1945, a person who proposes to sink, for the purpose of searching for or abstracting water, a well or borehole intended to reach a depth of more than 50 feet, must first notify his intentions in that respect to the Committee of the Privy Council for Scientific and Industrial Research.

(ii) By s. 140 of the Public Health Act, 1936, a local authority may take proceedings before the local magistrates for an order directing that a well the water from which is so polluted as to be prejudicial to health shall be closed, but this applies only to water which is or is likely to be used for domestic purposes.

(iii) Building byelaws made under ss. 61–70 of the Public Health Act, 1936, may regulate the manner of construction of wells (see Public Health Act, 1936, s. 61 (1) (ii) (*f*)); the Model Series of byelaws issued by the Ministry of Housing and Local Government in 1952 and 1953 goes into considerable detail in prescribing the precautions that must be taken so as to ensure that the water in a well shall not be liable to pollution; again, however, this provision regulates only the construction of a well intended to supply water for human consumption.

Public sources

The law relating to public water supplies and to statutory water undertakers (i.e., "any company, local authority, board, committee, or other person authorised by a local enactment to supply water and any local authority or board supplying water under the Public Health Act, 1936": Water Act, 1945, s. 59 (1)) is complicated by the number of statutes and statutory codes that may apply to any particular water undertaking. There are two main classes of such undertakers, namely, companies, boards or local authorities operating under special Acts, and local authorities or boards operating under the Public Health Act, 1936. Undertakers operating under special Acts may or may not have adopted the code contained in Sched. III to the Water Act, 1945; if that code has not been adopted by the particular undertaking, the undertaking will be governed by the Waterworks Clauses Acts, 1847 and 1863, subject to any modifications contained in their special Act. In the case of a Public Health Act undertaking, the majority of the provisions of Sched. III to the 1945 Act are applied by an amendment to s. 120 of the Public Health Act, 1936, made by Sched. IV to the 1945 Act.

Two questions arise within the context of this article:—

(*a*) What rights has the owner of land to claim a supply of water to be provided by the undertakers to his premises?

(*b*) Who owns, and who is responsible for the maintenance of, the pipes through which such a supply of water is provided?

(*a*) *The right to a supply*

It is first important to note the overall duty—probably in law virtually unenforceable otherwise than by complaint to the Minister of Housing and Local Government under s. 322 of the Public Health Act, 1936—of the local authority contained in s. 111 of the 1936 Act to ascertain the "sufficiency and wholesomeness" of water supplies in their district, and also to provide a supply for houses and schools in their district where necessary.

If the Waterworks Clauses Act, 1847, applies to the particular undertaking, s. 35 thereof stipulates that the undertakers must provide a sufficient supply of "pure and wholesome water" for the domestic use of all the inhabitants within the limits of their special Act, and any owners or occupiers of houses may require the mains to be extended as may be necessary provided such persons guarantee to take a supply of water for at least three years, and further the amount of water rates such persons would be liable to pay must be at least one-tenth of the cost of laying the mains. "Domestic purposes" in this and similar sections of water legislation has been the subject of much litigation—certain purposes, including the watering of cattle and of gardens, have been excluded by s. 12 of the Waterworks Clauses Act, 1863. In *Re Willesden Borough Council* [1944] 2 All E.R. 600 it was held that if the purpose for which the

water is being used is one for which according to the ordinary habits of domestic life people require water in their houses, it is a domestic purpose: " the use or purpose to which the water is put, the heating of the building, is clearly a domestic use and it does not cease to be a domestic use merely because a business is carried on on the premises " (*per* Atkinson, J., at p. 604). If the particular purpose for which water is required cannot be brought within the term " domestic purposes," the intending consumer will (subject to the provisions of the special Act) have to come to terms with the undertakers.

In the case of undertakers subject to Sched. III to the 1945 Act, the owner or occupier of premises who has laid a service pipe to his premises (however far distant the main may be—but see the definition of " service pipe," below) is entitled to a supply of water for domestic purposes: Sched. III, para. 30. In addition, the owner of land who intends to erect buildings thereon which will require a supply of water for domestic purposes, may require the undertakers to lay the necessary mains, provided he is prepared to undertake to pay one-eighth of the cost of laying the mains (less the normal water charges he would ordinarily pay) for a period of twelve years, or until the water charges recovered in respect of those mains equals or exceeds such cost, and also to deposit such security therefor as the undertakers may require (Water Act, 1945, s. 37). This provision being contained in the substantive part of the 1945 Act, and not in the adoptive Sched. III, it applies to all water undertakings, although the corresponding provision of s. 35 of the 1847 Act above described has not been repealed.

(*b*) *Ownership of pipes*

Under the Waterworks Clauses Acts, mains and communication pipes are the property of the undertakers, although under s. 47 of the 1847 Act the owner (or " reputed owner ") of any house served by a communication pipe may purchase the pipe from the undertakers and will then not be liable to pay any rent in respect thereof. No definitions of the different kinds of pipes are contained in these Acts, but it was held in *Parnell* v. *Portsmouth Waterworks Co.* (1910), 75 J.P. 99, that the undertakers could not be compelled to bear the cost of carrying out repairs undertaken by a consumer to a communication pipe. On the other hand, s. 19 of the Act of 1863 prohibits the consumer from making alterations to communication pipes without the consent of the undertakers, and, therefore, the undertakers may be responsible to third parties for any injuries caused by lack of repair (see, e.g., *Chapman* v. *Fylde Waterworks Co.* [1894] 2 Q.B. 599).

Fortunately the position is much clearer under Sched. III to the 1945 Act. Here there are three different types of pipes through which water may be supplied (see para. 1 (1) thereof):—

" mains "—pipes laid by the undertakers for the purpose of giving a " general supply " of water, as distinct from a supply to individual consumers;

" communication pipe "—that part of the service pipe which lies between the main and the boundary of the street in which the main is laid, including the ferrule at the junction of the service pipe and the main and any stopcock at the end of the communication pipe or between the communication pipe and the main; or where the premises supplied abut on a street in which the main is laid and there is a stopcock inside the premises but as near as practicable to the boundary of the premises and the service pipe does not enter the premises through the outer wall of a building abutting on the street, that part of the service pipe between the main and the stopcock;

" supply pipe "—that part of a service pipe which is not a communication pipe as above defined; and a " service pipe " means any pipe for supplying water from a main to premises under pressure from the main.

" Mains " are, of course, vested in, and the exclusive responsibility of, the undertakers; so, by para. 44 of Sched. III, are communication pipes. This provision is one of those which has been applied to all undertakers operating under the Public Health Act, 1936. Supply pipes are, however, the responsibility of the owners of premises served thereby. If waste of water, or injury to persons or property, is being caused or is likely to be caused by some injury to or defect in a supply pipe, the undertakers may themselves carry out such remedial works as they may consider necessary and recover the cost of those works from the owner of the premises concerned (without prejudice to any rights such owner may have under the terms of any tenancy agreement or otherwise against the occupier of the premises): Sched. III, para. 63 (*g*).

It should also be noted that the local authority, under s. 138 of the Public Health Act, 1936, as amended by the Water Act, 1945, can in certain circumstances compel the owner of a dwelling to provide a water supply in pipes for the domestic purposes of the inhabitants thereof. If such an owner fails to comply with a notice served under this section, the local authority can take action in default, but they are limited to the extent of £20 per dwelling in their rights to recover their expenses from any such owner so in default.

J. F. Garner.

"THE SOLICITORS' JOURNAL," 19th JUNE, 1858

On the 19th June, 1858, The Solicitors' Journal discussed a new Bill dealing with company law. " The Bill bears evident marks of having been framed with reference to the recent decision in the case of the Northumberland and Durham Bank; but, strangely enough, it does nothing to cure the worst of the mischiefs which were so pointedly exposed in the judgment of Lord Justice Turner. 'Most marvellous it is,' said the Lord Justice, 'that the legislature should have placed the law in this position, that there being the Acts of 1848 and 1849 for winding-up companies, a new Act is passed in 1856, which has for its object the registration of companies, but also the winding-up of companies. This Act, is amended in 1857; banking companies are introduced into it by the operation of another Act passed in the year 1857; so that there is a complete system of winding-up under the Act of 1856; and yet the old winding-up Acts are not only left standing but actually amended by the Act passed in the same year 1857; so that in truth we have two series of winding-up Acts passed by the legislature in the same year' . . . Besides the two systems of winding-up . . . there still remained in existence a third power, earlier in date than either—viz., that of proceeding by an adjudication in bankruptcy against a defaulting company. The conflict between Bankruptcy and Chancery in the case of the Royal British Bank has illustrated the evils of this kind of legislation by wasting about £17,000 of the money belonging to the creditors . . . Yet Parliament . . . had gone on spinning new webs of complication and by the Winding-up Amendment Act of 1857 had still further aggravated the contradictions . . . There is only one possible way out of the labyrinth of complications with which the legislature has embarrassed a question not in itself involving any serious difficulty; and that is by sweeping away all that has been done, and passing a new Consolidation and Amendment Act. . . ."

Landlord and Tenant Notebook

A LEASEHOLD PROPERTY (REPAIRS) ACT, 1938, POINT

THE preliminary point decided in *Cusack-Smith* v. *Gold* [1958] 1 W.L.R. 611 ; *ante*, p. 420, was a short one : whether the word " lessee " in the Leasehold Property (Repairs) Act, 1938, s. 1, covered an ex-lessee who had assigned the residue of the lease.

It will be recalled that the statute (its scope recently extended by the Landlord and Tenant Act, 1954, s. 51) places obstacles in the way of landlords anxious to enforce repairing agreements in leases for seven years or more before the last three years of the term : the procedure being that the lessor must serve a notice on the lessee, who may then serve a counter-notice on the lessor claiming the benefit of the Act, after which the lessor cannot proceed without leave. And in order to appreciate why the point was raised in the recent case, it is, I think, necessary to bear in mind that the restriction applies not only to forfeiture proceedings but also to claims for damages.

The facts : three houses had been let in 1871–2 for terms expiring in 1961. In 1946 one *S-D* held two of the leases, and in 1954 he assigned them to a limited company (who then granted him an underlease which he ultimately assigned to another company in September, 1956). The three houses were occupied by some eight different individuals, presumably sub-tenants.

The houses being out of repair and the lease containing the usual provisos for re-entry, the landlords served in December, 1955, a forfeiture notice, satisfying the requirements of both the Law of Property Act, 1925, s. 146, and the Leasehold Property (Repairs) Act, 1938, on the company, and also caused a notice and schedule of dilapidations to be affixed to the door of one of the two houses once held by *S-D*.

The action concerned all three houses and was brought against the eight occupiers, the company, and *S-D*. One may be reminded of the ten small Africans of the nursery-rhyme ; but in fact, there are marked differences between the two series of events. The disappearance of the first eight defendants was simultaneous and was also in a sense merely notional ; judgment was given against them, but this would merely make them statutory tenants if they were not so already. The ninth defendant was the company which, before claiming but being refused the benefit of the Leasehold Property (Repairs) Act, 1938, assigned the leases to a bankrupt, whose trustee subsequently disclaimed. And the tenth defendant did not disappear ; he was, indeed, the only one to appear ; and, besides disputing the allegations of disrepair, he contended that the proceedings were not maintainable because no Leasehold Property (Repairs) Act, 1938, notice had been served upon him.

Notice and counter-notice

Section 1 (1) of the Act says that where a lessor serves on a lessee a notice under the Law of Property Act, 1925, s. 146 (1), etc., the lessee may serve a counter-notice claiming the benefit of the Act ; subs. (2) that a right to damages shall not be enforceable unless " such a notice as is specified in " the Law of Property Act, 1925, s. 146 (1), is served, and the lessee may then serve such a counter-notice.

Thus, where and in so far as the issue is forfeiture, reliance can be said to have been placed on the s. 146 (1) restrictive proceedings themselves : there would be no point in repeating the provision making service of a forfeiture notice a condition precedent to enforcement (by action or otherwise). But, as s. 146 of the Act of 1925 is not concerned with claims for damages, it was necessary to make service of a notice a prerequisite when such were claimed. The tenth defendant, having held the lease from 1946 to 1954, could, accordingly, complain that leave had not been obtained to sue him.

Object

It was argued that the object of the Leasehold Property (Repairs) Act, 1938, was " to protect tenants " and that if assignors were left out it would enable landlords, by indirect action—i.e., by suing the original lessee, who could then claim indemnity from the assignee—to frustrate the intention of the Legislature : a landlord was to serve notice on everyone he proposed to sue. The reply that the Act was not for the protection of tenants, but was meant to cut down landlords' common-law rights, does not seem to be complete in itself : the Act surely does both, and could, indeed, hardly do the one without doing the other. But a further argument, that no attempt is made to distinguish between " lessee " in s. 1 (1) and " lessee " in s. 1 (2), is indeed cogent.

The judgment

Though the action apparently concerned both leases held by the tenth defendant till 1954, it seems that one house must have been in a far worse state than the other, for Pilcher, J.'s judgment always speaks of " the house " and " the lease."

The learned judge considered that " lessee " in the Law of Property Act, 1925, s. 146, meant a lessee in possession, one who has a subsisting lease at the time when forfeiture proceedings are taken ; and referred to the definition of " lessee " in subs. (5) (*b*) (the W.L.R. report makes it " s. 1 (5) (*b*) " but the context requires " s. 146 (5) (*b*) "). On this point, the comment might be made that the " definition " is one of those which use the word " includes," not the word " means " ; and it might be arguable whether this is a case of what follows " comprehending, not only such things as they signify according to their natural import, but also such things as the interpretation clause shall include " or a case of " includes " being the equivalent of " means and includes," which has to be decided according to the context of the Act (*Dilworth* v. *Stamps Commissioners* [1899] A.C. 99). If the latter, it would certainly be difficult to see how it could apply to one who was but is no longer an assignee of a lease. But the point which follows—re-entry and forfeiture are not remedies which can be sought against anyone who has divested himself of all present estate and interest in the premises—is convincing.

The question was, what was the effect of the requirement in the Leasehold Property (Repairs) Act, 1938, s. 1 (2) (I

read " s. 1 (1) " in the report as " s. 1 (2) "), which dealt for the first time with restrictions on the landlord's right to take proceedings for *damages* for breach of covenant, that the lessor must serve a s. 146 notice on the lessee? Having read both subss. (1) and (2), Pilcher, J., concluded that throughout the section the words " a lessee " and " the lessee " (and they or one of them occur or occurs in each of the other four subsections) must be given the same meaning as in s. 146 of the Law of Property Act, 1925. This view, the learned judge pointed out, was consistent with the provisions of the Leasehold Property (Repairs) Act, 1938, s. 1 (5), which sets out a number of facts to be proved by the lessor before he can be granted leave for the purposes of the section—i.e., either to enforce re-entry or to recover damages (subs. (3)); most of these are " matters which are important when one is dealing with the lessee in possession or the lessee with a present estate or interest in the premises."

" Forfeiture notice "

Most of us have been accustomed to calling the notice required by s. 146 (1) of the Act of 1925 a " forfeiture notice." The expression is a convenient one, but it may be said that *Cusack-Smith* v. *Gold* brings home to us the fact that such a notice, though a condition precedent to forfeiture, does not actually mention forfeiture or re-entry itself. A landlord is not to re-enter unless he serves his tenant with a notice saying what is wrong, calling upon him to put it right (if it can be put right) and demanding monetary compensation: the notice itself need not, as far as the provision in s. 146 (1) goes, tell the tenant why it is being given. It is, perhaps, confusing to find that such a notice may have to be served when a right to damages for breach of covenant is sought to be exercised, in which case it cannot be called a " forfeiture notice," but the object of the Leasehold Property (Repairs) Act, 1938, is served.

R. B.

HERE AND THERE

CLASSICAL AND IMPRESSIONIST

Ever since Lord Atkin in a famous constitutional opinion in the House of Lords cited Humpty Dumpty's *dictum* that a word meant what he chose it to mean, neither more nor less, lawyers whose reading never carries them beyond the pages of the Law Reports have been brightly repeating the quotation with a literary flourish, although they would be puzzled whether to locate Humpty Dumpty in Wonderland or through the looking-glass. Second-hand or not, the passage not only adorns an argument with an appearance of literacy; it also does mark a frontier in the conception of the use of words. Lord Atkin's was the classical conception of language producing designed, integrated, well proportioned sentences. He would, I am sure, have agreed with the opinion of Confucius that, if language is not correct, what is said is not what is meant; if what is said is not what is meant, then what ought to be done remains undone; if this remains undone morals and arts will deteriorate and justice will go astray. Humpty Dumpty, on the other hand, was an Impressionist or a Post-Post-Impressionist, and he is far more popular at the present time than the classicists. The English language, so well adapted to the fine shades and nuances of poetry, lends itself particularly well to the idea that words have no frontiers, that all is context or inflexion of voice or overtone or undertone, and by the time you have stirred in a little popular Freud any word or any sentence may mean anything in the wide, wide world or the subconscious under the world. Now, it is perfectly true that words have not the simplicity of a Victorian copy-book, but the ultra-Impressionist view of language has one serious disadvantage (or perhaps it is an advantage which explains its current popularity)—it makes it so much easier to tell lies with a show of respectability. " It's the truth," people will say, with a side-glance at Pirandello, " if you think it is."

WHAT DO YOU EXPECT?

It was all very well when that sort of thing was confined to " intellectuals " and people educated beyond their intelligence and dabblers in psychiatry, but now it has filtered down to the butchers and bakers and candlestick-makers. At any rate, the Parliamentary Committee of the National Association of Master Bakers, Confectioners and Caterers (what a mouthful of dough!), in conference assembled at Torquay recently, complained heartily of " ridiculous " legislation designed to protect the " imaginary customer who believes she gets real cream in doughnuts for 4½d." Now, one does not want to be pedantic like the zealous civil servants who a few years ago seriously attempted to make the importers of Bristol Cream alter its description so as not to seem to represent that it contained the nutritious ingredients of dairy produce. The firm in question returned a sharp answer, pointing out (*inter alia*) that neither shaving cream nor shoe cream had their origins in the dappled herd of the meadows. But I very much doubt whether the Master Bakers, Confectioners and Caterers would care to invoke that particular analogy. The " cream " that one finds smeared so liberally on " pastries " might very well be shaving cream, so far as texture goes, or whipped whaleblubber, or, indeed, anything to which the ingenuity of industrial chemistry can impart a fluffy whiteness.

WHAT IS " CREAM "?

In that view, " cream " in a doughnut is something which gives the hypothetical consumer the superficial impression that he is consuming the dairy product which satisfied the rough appetites of his rude forefathers, but for which we have substituted more complex and civilised delicacies. In Dr. Franklin Bicknell's book, " The English Complaint," a review of English diet in 1952, there is the following pleasing passage on " cakes ": " Cakes, by tradition, are an excellent even if rather rich food. The very simplest used to be made of eggs, butter, sugar, candied peel and unpoisoned flour. Now most are made in shops of agenised flour . . . some form of fat ' stretched ' by the type of chemical which causes gangrene in rats' tails and some synthetic sweetening agent which, with luck, is the relatively non-toxic saccharin or sodium cychlohexyl sulfamate, but which equally well may be either p-phenetyl-urea or 1-n-propoxy 2-amino-4-nitrobenzene. Both of these are highly poisonous . . . To make this disgusting caricature of a cake even more loathsome . . . the ' cake ' may be smeared over with some form of purple or green or puce icing made, flavoured and coloured from God knows what. The ' cream ' is made from margarine, reconstituted, milk and glyceryl monostearate, or preparations from gums, seaweed, gelatine or cellulose esters." Progress rushes on, jet-propelled, and one is well aware that a lot of " cream " must have flowed through the laboratories since 1952. So what is the current formula?

Richard Roe

RENT ACT PROBLEMS

Readers are cordially invited to submit their problems, whether on the Rent Act, 1957, or on other subjects, to the " Points in Practice " Department, " The Solicitors' Journal," Oyez House, Breams Buildings, Fetter Lane, London, E.C.4, but the following points should be noted :

1. Questions can only be accepted from registered subscribers who are practising solicitors.

2. Questions should be brief, typewritten *in duplicate*, and should be accompanied by the sender's name and address *on a separate sheet*.

3. If a postal reply is desired, a stamped addressed envelope should be enclosed.

Schedule IV—Restrictions on Levy of Distress for Rent

Q. (1) We act for a client who is the owner of premises comprising a house and shop occupied by a tenant at a weekly rental of £1 7s. 7d. inclusive. The rateable value is £52. The premises are no longer protected under the Rent Act, but are now affected by the Landlord and Tenant Act. Is it necessary to obtain the leave of the court to distrain for arrears of rent owing ?

(2) We also act for a client who is the owner of a self-contained flat. The rateable value exceeds £30. Is it necessary to obtain the leave of the court to distrain for arrears of rent owing ?

A. (1) In our opinion, leave is not necessary. The " period of grace " provisions, giving the tenant the right to retain possession as if the Rent Acts had not ceased to apply to the dwelling-house (Rent Act, 1957, Sched. IV, para. 2 (1)) do not apply in the circumstances of the case : see para. 2 (6) ; and when by virtue of s. 11 of that Act the Rent Acts did cease to apply, the restrictions on the levy of distress imposed by the Increase of Rent etc., Restrictions Act, 1920, s. 6, automatically ceased to affect the landlord.

(2) If the flat was decontrolled by the Rent Act, 1957, the restrictions on the levy of distress continue, in our opinion, until the expiry of a Form S notice given under Sched. IV, para. 2 (2) (it being assumed that the flat was, on 6th July, 1957, the subject of a statutory tenancy or of a controlled tenancy which would or might come to an end by 6th October, 1958, by effluxion of time or notice to quit : para. 2 (1)) ; this by virtue of the provision (para. 2 (1)) entitling the tenant to retain possession " as if the Rent Acts had not ceased to apply to the dwelling-house." If by any chance the flat decontrolled was, on 6th July, 1957, let for a term of years expiring after 6th October, 1958, we consider that the landlord may distrain without leave.

Schedule IV—Three-year Agreement—Landlord's Conditional Right to Determine

Q. We have been asked to approve on behalf of a landlord a printed form of agreement, for use in the case of three-year tenancies of premises decontrolled under the Rent Act, 1957, which contains the following clause :—

" That if the said premises shall be destroyed or damaged by fire storm or tempest so as to be unfit for occupation and use the rent hereby reserved shall be suspended until the premises have been rendered fit by the Landlord BUT that the Landlord may at his option serve upon the Tenant four weeks' clear notice expiring at any time determining the tenancy absolutely in lieu of rendering the premises fit."

We are concerned that the option, although only exercisable in certain special circumstances, may prevent the agreement from complying with para. 4 of Sched. IV to the Rent Act, and we should be grateful for your views on the matter. If the agreement does fail to comply with para. 4, what would be the effect ? Would the option merely be unenforceable or would the whole agreement be invalid, so that the rent would revert to the previous controlled rate until the requisite six months' notice has been given ?

A. While we agree that the expression " notice to quit," which is the one used in Sched. IV, para. 4, to the Rent Act, 1957, covers a notice given under a power to determine, we consider that it would not be held to extend to a power not corresponding to what is commonly called an " option to break," i.e., at a stated time. We base this view on a consideration of object and context, the important part of the latter being : " a tenancy not *expiring, or terminable* by notice to quit given by the landlord, *earlier than* three years from the commencement thereof " ; the paragraph insists on a habendum of not less than three years, and anticipates attempts to evade by a landlord's option to break ; but in our opinion a conditional right to determine the tenancy, though it involves a right to resume possession, does not make a tenancy one terminable " by notice to quit . . . earlier than three years from the commencement thereof." We cannot support this opinion by citing any decision in point and, dealing with the further question, we consider that if we are wrong (no Form S notice having been served) the effect would be that nothing has been done to destroy the tenant's right " to retain possession of the dwelling-house in the like circumstances . . . as if the Rent Acts had not ceased to apply to the dwelling-house " : Sched. IV, para. 2 (1) ; and that, till such a notice has been served and has expired, he could at any time assert those rights, being liable for the old rent only.

HARMSWORTH ENTRANCE EXHIBITIONS

The object of the Harmsworth Entrance Exhibitions, announced by the Middle Temple, is to assist those desirous of making practice at the English Bar their career at an earlier stage of their legal education than that for which the Harmsworth Scholarships are designed. It is proposed to award six Major Exhibitions and twelve Minor Exhibitions in each year. A Major Exhibition will provide £60 on admission or, if the candidate is already a member of the Inn, on award and also £60 on call. A Minor Exhibition will provide £60 on admission or award (as the case may be). Exhibitioners of either class will be excused from making any deposit without being called upon to apply for dispensation. A candidate must : (*a*) have been admitted to the Middle Temple or declare his or her intention of applying for admission to the Middle Temple immediately after any award. But, as awards are intended primarily for new law students, they will not be open to persons who have been admitted to the Inn prior to the 1st January of the year of application. (*b*) Be a member of the University of Oxford or the University of Cambridge or declare his or her intention of becoming a member of one of these Universities as soon as practicable. (*c*) Be under the age of twenty-seven years at the date of application. (*d*) Have signed a declaration of intention to practise at the Bar in England or Wales.

Awards will be made without examination but after an interview by the Harmsworth Committee. Applications may be made by undergraduates in residence at either University or by those who are completing or have completed their last term at school and who have been accepted for one of the two Universities. Forms of application and further details may be obtained from the Under Treasurer, Middle Temple, London, E.C.4.

NOTES OF CASES

The Notes of Cases in this issue are published by arrangement with the Council of Law Reporting, and full reports will be found in the Weekly Law Reports. Where possible the appropriate page reference is given at the end of the note.

Judicial Committee of the Privy Council

INSURANCE : " INCEPTION OF INSURANCE " : WHEN COVER OBTAINED

Simons *v.* Gale

Viscount Kilmuir, L.C., Viscount Simonds, Lord Morton of Henryton, Lord Tucker, Lord Clyde. 3rd June, 1958

Appeal from the Supreme Court of New South Wales.

The appellant, Percy Simons, trading as Acme Credit Services, who had been asked by a partnership to advance to them £A23,000—against repayment under a letter of credit—for the purchase by them of the vessel *Cap Tarifa*, then lying at Noumea, New Caledonia, which they proposed to have converted at Brisbane, in Queensland, for carrying cattle from Townsville, in Queensland, to Manila, entered into negotiations for insurance cover, and a certificate dated 13th December, 1955, was issued to him by his brokers certifying that he was insured with Lloyd's underwriters " to pay a total loss of £A29,000 in the event of the vessel not completing loading Townsville within ninety days from sailing from Noumea from any cause whatsoever," subject to the following warranties, which were contained in two policies of insurance issued on 25th April, 1956 : " Warranted animals available for loading. Warranted all arrangements for conversion made at inception of this insurance." There was a failure of the venture—the vessel was never converted after reaching Brisbane and never sailed from there to Townsville—for which the appellant was in no way responsible, but in answer to his claim under the policies the respondent, A. E. M. Gale, a representative underwriter, repudiated liability on the ground of breach of warranty, alleging that all arrangements for conversion had not been made at the inception of the insurance. The Supreme Court of New South Wales in Commercial Causes (Walsh, J.) held (10th December, 1957) that the appellant should recover nothing from the respondent. The appellant appealed.

LORD TUCKER, giving the judgment, said that as a matter of construction " inception of this insurance " meant the moment of time when insurance cover was obtained and not the date, 10th January, 1956, when the vessel sailed from Noumea. The certificate and the correspondence relative to effecting the insurance justified the inference that cover had been secured by 13th December, 1955, and that was the material date for the purpose of ascertaining whether there had been a breach of the warranty as to arrangements for conversion. Next, it was difficult to envisage what, short of a contractual arrangement, would be the minimum requirements to comply with the warranty " all arrangements for conversion " of the vessel made. The word " all " precluded a construction which would be satisfied by " some arrangement." On the facts the warranty had not been complied with at the decisive date, 13th December, 1955. Further, if something less than a contractual arrangement would suffice, something more definite and precise than the tentative undertaking given by the Brisbane ship repairers—" we can fit the ship . . . [we] do not give firm quotations as materials, wages, etc., vary "—would be required. Appeal dismissed. The appellant must pay the costs of the appeal.

APPEARANCES : *Sir Garfield Barwick*, Q.C. (Australia) and *Malcolm Hardwick* (*Botterell & Roche*) ; *John Megaw*, Q.C., and *C. T. Bailhache* (*Ince & Co.*)

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law] **[1 W.L.R. 678**

CEYLON : PERJURY : STATUTORY POWERS OF COURT

Samaratunga *v.* R.

Viscount Simonds, Lord Cohen, Lord Keith of Avonholm, Lord Somervell of Harrow, the Rt. Hon. L. M. D. de Silva

3rd June, 1958

Appeal from the Supreme Court of Ceylon.

A Commissioner of Assize of the Supreme Court of Ceylon, with a view to determining the appropriate sentence to be passed on a man on trial before him who had pleaded guilty to a charge under s. 439 (1) of the Criminal Procedure Code of having given false evidence in proceedings before the Commissioner in which the present appellant, Don T. Samaratunga, had been charged with and acquitted of aiding and abetting an attempted murder, himself called the appellant and others as witnesses. The Commissioner, having come to the conclusion that the appellant in giving his evidence was deliberately lying, summarily sentenced him to three months' rigorous imprisonment. In so doing the Commissioner acted under s. 440 (1) of the Criminal Procedure Code (Legislative Enactments of Ceylon, 1938, c. 16), which provided : " If any person giving evidence . . . in open court in any judicial proceeding under this Code gives, in the opinion of the court before which the judicial proceeding is held, false evidence within the meaning of s. 188 of the Penal Code, it shall be lawful for the court . . . summarily to sentence " him to imprisonment for any period not exceeding three months. The appellant now appealed by special leave.

LORD SOMERVELL OF HARROW giving, on 3rd June, their lordships' reasons for having dismissed the appeal on 23rd April, said that it was stated in *Subramaniam* v. *R.* [1956] 1 W.L.R. 456, at p. 460, that " It was . . . never intended that in the exercise of the power under s. 440 (1) in the course of a criminal trial a subsidiary criminal investigation should be set on foot not against the prisoner charged but against the witnesses in the case." Nothing of the kind took place here. The evidence of the appellant was given in the course of the trial of the man guilty of perjury, in relation to sentence. The Commissioner had exercised his discretion judicially. From the nature of the power it should only be used when the judge was " clear beyond doubt " (*Subramaniam's* case, *supra*, at p. 460) that the witness had given false evidence as defined. Subject to that overriding principle, their lordships adopted what was said by Wood Renton, C.J., in *Banda* v. *Sada* (1914), 17 N.L.R. 510, at p. 512, in relation to the true interpretation and scope of s. 440 : " The Legislature has left the courts quite free as a matter of law to deal under that section with any form of ' false evidence ' within the meaning of s. 188 of the Penal Code, and if we attempt to fetter that discretion by rigid general rules as to the class of cases in which it may or may not be exercised, we shall be . . . running the risk of paralysing the operation of a statutory power, the maintenance of which in full working order is essential to the administration of justice in this country . . . " Appeal dismissed.

APPEARANCES : *Dingle Foot*, Q.C., *Joseph Dean* and *Miss D. Phillips* (*Graham Page & Co.*) ; *T. O. Kellock* (*T. L. Wilson & Co.*).

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law] **[3 W.L.R. 4**

Court of Appeal

ARBITRATION : ALLEGED TRADE CUSTOM THAT UMPIRE SHOULD CONFER WITH BOARD OF APPEAL : WHETHER REPUGNANT TO TRADE ASSOCIATION RULES

London Export Corporation, Ltd. *v.* Jubilee Coffee Roasting Co., Ltd.

Jenkins, Parker and Pearce, L.JJ. 9th May, 1958

Appeal from Diplock, J. ([1958] 1 W.L.R. 271 ; *ante*, p. 178).

A contract for the sale of groundnuts incorporated all the terms, conditions and rules of Contract Form No. 75 of the Incorporated Oil Seed Association [I.O.S.A.], which contract contained a clause providing for arbitration according to the rules appended thereto. By those rules : " Any dispute arising out of a contract embodying these rules shall be referred to arbitration in London, each party appointing one arbitrator . . . and such arbitrators shall have the power if and when they disagree to appoint an umpire," both arbitrators and umpire to " be a member of the association, or a partner in a member's firm, or a director of a company represented by a member." The rules also gave a right of appeal to a board of appeal consisting of four members of the association's committee of appeal and provided that " No member of the committee of appeal who has an interest in the matter in dispute, or who has acted

as arbitrator or umpire in the case and no member of the same firm or company to which either of the arbitrators or the umpire shall belong, shall vote on the question of the appointment of members of the board of appeal or shall be appointed a member of the board of appeal." The rule did not detail the procedure to be adopted at the hearing of an appeal. A dispute between the parties to the contract was referred to arbitration and an umpire was appointed in accordance with the rules. The umpire awarded in favour of the sellers and the buyers appealed to the board of appeal. Throughout the hearing by the board of appeal the umpire was present and at the conclusion of the hearing, at the request of the chairman and after protest by the buyers, he remained with the board. It was the customary practice in I.O.S.A. arbitrations, and had been so for about fifty years, for the umpire to remain with the board of appeal in the absence of the parties. After the parties had retired the chairman asked the umpire if the evidence and contentions put before the board differed from those before him; the umpire replied "No" and volunteered the information that he had taken a certain view of the contract. The board of appeal upheld the umpire's award. On a motion by the buyers that the award be set aside on the ground that the board of appeal had misconducted themselves in asking the umpire to remain and communicating with him in the absence of the parties, Diplock, J., set aside the award. The sellers appealed.

JENKINS, L.J., said that, in the absence of some agreement between the parties, the act of the appeal board would have amounted to technical misconduct which would invalidate the award. Diplock, J., had held that an alleged trade custom could be excluded from a mercantile contract by its express or necessarily implied terms; that the rules implied that the umpire should have nothing to do with the appeal, so that their award should be set aside. Consideration of the authorities, such as *Humfrey* v. *Dale* (1857), 7 E. & B. 266, *Tucker* v. *Linger* (1883), 8 App. Cas. 508, and *Produce Brokers Co., Ltd.* v. *Olympic Oil and Cake Co., Ltd.* [1916] 1 A.C. 314, showed that the judge's view of the law was right, and that a custom would only be imported into a contract where it could be so imported consistently with the tenor of the documents as a whole. In the present case the rules called for a two-stage arbitration, first by arbitrators and umpire, and secondly by the appeal board. At the end of the first stage the umpire was *functus officio*, and it would be repugnant to introduce a third stage in the form of a conference between the appeal board and the umpire. The appeal should therefore be dismissed, but it should be added that it was difficult to regard the case as one involving a trade custom; what had been set up was rather the prescriptive right to commit an irregularity from arbitration to arbitration.

PARKER and PEARCE, L.JJ., agreed that the appeal should be dismissed. Appeal dismissed.

APPEARANCES: *John Donaldson* and *C. S. Staughton* (*Gaster and Turner*); *H. Fisher* (*Coward, Chance & Co.*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] **[1 W.L.R. 661**

LIBEL AND SLANDER: FAIR COMMENT: DEFAMATORY STATEMENTS IN NEWSPAPER REPORT OF CRIMINAL TRIAL: REPORT INACCURATE

Grech *v.* Odhams Press, Ltd., and Another
Addis *v.* Same

Jenkins, Parker and Pearce, L.JJ. 21st May, 1958

Appeal from Donovan, J., sitting with a jury ([1957] 1 Q.B. 310; 101 SOL. J. 921).

The plaintiff Grech, who had been associated with a business of letting flats for immoral purposes and had been convicted on a charge connected therewith, was convicted on a charge of housebreaking and theft and sentenced to a term of imprisonment. In the same prison the plaintiff Addis, formerly a solicitor, was serving a term of imprisonment for fraud. While serving his sentence Grech submitted two petitions to the Home Secretary to secure a review of his sentence; in them he made a number of allegations against the police in connection with what a witness at the hearing of the action described as "vice in the West End." He also alleged that before his trial a conspiracy had been entered into by his solicitor *C*, one *P*, and *R*, a police inspector (who demanded a bribe), to procure certain false evidence for the defence. In the result *R*, *C* and *P* were tried on a charge of conspiracy to defeat the ends of justice, and were convicted and sentenced on 29th November, 1955. At the trial Grech stated in evidence that he had been assisted in the preparation of his petitions by a prisoner whom he did not name. *P* stated in evidence that Grech had told him "that he was being helped by some solicitor by the name of Addis or something." On the day after the trial the defendants published the following words in the *Daily Herald*: "All the dirt . . . the jury convicted Grech and he was sentenced to three years. There he brooded over his belief that he had first been framed then induced to pay money for the 'fiddle' and yet gaoled. With the help of Jasper Addis, an ex-solicitor, one-time man of affairs to George Dawson—and gaoled for defrauding him—Grech drew up a petition to the Home Secretary. Into it he put all the dirt he knew, and as a Maltese running West End flats as brothels he thought he knew a great deal." In actions for libel brought by the plaintiffs, the jury found that the words were defamatory; that they were untrue (as had been admitted by the defendants in Addis's case, as he had not helped Grech); that they were not a fair and accurate report of the criminal proceedings, but that they were fair comment on a matter of public interest. Donovan, J., entered judgment for the defendants, holding that the plea of fair comment could be sustained in each case. The plaintiffs appealed.

JENKINS, L.J., delivering the judgment of the court, said that as to Grech's case it could not be said that no reasonable jury could have returned such a verdict on the question of fair comment, and his appeal must be dismissed. The case of Addis was essentially different; in his case it was quite impossible for any reasonable jury to hold that the allegation complained of was fair comment, unless the statement on which the comment was based was either true or else a fair and accurate report of what was said in court. There was nothing in the evidence to justify the categorical statement about Addis, that he had assisted Grech. Grech never said so, and *P* merely said that Grech had told him so. No properly directed jury could hold that that was a fair and accurate report. If a statement made by a witness was fairly and accurately reported, and attributed to the witness who made it, then, no doubt, although the evidence given by the witness was afterwards shown to be false, the statement reported could be made the subject of fair comment. But that was not the present case. The appeal of Addis must be allowed, and a new trial ordered, limited to the question of damages.

Appeal of Grech dismissed. Appeal of Addis allowed.

APPEARANCES: *Claud Allen* (*Probyn, Dighton & Parkhouse*); the plaintiff Addis in person; *F. H. Lawton*, Q.C. and *Hugh Davidson* (*Simmons & Simmons*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] **[3 W.L.R. 16**

Chancery Division

RESTRICTIVE PRACTICES: CONDITIONS AS TO RESALE PRICES: NOTICE OF RESTRICTION

Goodyear Tyre and Rubber Co. (Great Britain), Ltd. v. Lancashire Batteries, Ltd.

Upjohn, J. 2nd May, 1958

Motion.

The plaintiffs, who were manufacturers of motor-car tyres, sought an interlocutory injunction to restrain the defendants from selling the plaintiffs' products at prices below those fixed by the plaintiffs' price list and contrary to the conditions of sale thereby imposed. The British Motor Trade Association circulated a large number of traders (amongst whom were the defendants), setting out first the general effect of s. 25 of the Restrictive Trade Practices Act, 1956, and secondly stating that certain manufacturers and concessionaires (among whom were the plaintiffs) supplied their products for resale subject to a condition that those products were sold at a certain price, details whereof might be obtained on application to the respective manufacturers and concessionaires. The defendants received one of these circulars on 31st May, 1957, but did not have express notice of the conditions of sale as set out in the price list. In February, 1958, the defendants offered for sale some of the plaintiffs' products at a discount of 2s. in the £.

UPJOHN, J., said that counsel on behalf of the defendants submitted that the circular notice sent round by the British Motor Trade Association did not comply with the requirements

of s. 25, for it was not, for the purposes of that section, a notice of the condition as to prices. It was common ground that in the area of trading the doctrine of constructive notice as it is understood in law relating to the title of real estate had no place at all. The question was what notice was sufficient for the purposes of s. 25. The section provided that the condition might be "enforced by the supplier against any person not party to the sale who subsequently acquires the goods with notice of the condition as if he had been party thereto." If the trader had been party to the original contract of sale, he would, of course, have had express notice of the actual terms of the restrictive condition. The section seemed designed to put him in the same position. Counsel submitted that it was not sufficient merely to give notice that there was a condition restrictive of price, but that actual express notice of the actual terms of the condition must be given, and that the Motor Trade Association's circular did not give notice of that restriction. In his lordship's judgment the section must be strictly construed, and on its true construction it required an express notice of the actual terms and conditions sought to be enforced. The notice issued did not give such express notice of the actual terms and, therefore, for the purposes of the section the defendants had not received the requisite notice. Accordingly, the motion would be dismissed. Order accordingly.

APPEARANCES: *G. T. Aldous*, Q.C., and *S. J. Waldman* (*Osmond, Bard & Westbrook*); *D. Mervyn Davies* (*Gregory, Rowcliffe & Co.*, for *Read, Roper & Read*, Manchester).

[Reported by J. D. PENNINGTON, Esq., Barrister-at-Law] [1 W.L.R. 655

COMPANY: WINDING UP: PETITIONS PRESENTED IN COUNTY COURT AND HIGH COURT: JURISDICTION

In re Filby Bros. (Provender), Ltd.

Roxburgh, J. 12th May, 1958

Petition to wind up.

On 14th April, 1958, the *A* Co. presented a creditor's petition to wind up Filby Bros. (Provender), Ltd., in the Colchester county court. The petition was ordered to be advertised on 18th April, 1958, and to be heard on 14th May, 1958. Several creditors gave notice to support the petition but no creditor gave notice to oppose. On 16th April, the *B* Co. presented a creditor's petition to wind up Filby Bros. (Provender), Ltd., in the High Court. The *A* Co. then gave notice to the *B* Co. that they would appear and support the High Court petition subject to the county court petition, and filed an affidavit in the High Court setting out the facts concerning the county court petition. On the hearing of the High Court petition on 12th May, 1958, it was conceded that the county court had jurisdiction to wind up the company.

ROXBURGH, J., said that the question was as to the correct procedure to be followed in the circumstances. Nothing was to be found, either in the Act or in the rules, which gave any real clue. It was clear that the question must be solved in the High Court and not in the county court, whichever be the earlier petition in date, because by r. 46 of the Companies (Winding up) Rules, 1949, the county court judge could not transfer the county court proceedings to the High Court, and *per contra* the High Court judge could either keep them or transfer them to the county court. Under s. 219 of the Companies Act, 1948, it was plain that the judge could exercise the power of transfer without any application from any of the parties thereto, and it was for him to exercise his own discretion as to what, if any, steps ought to be taken to bring to the notice of the persons who had given notice in one or other of the courts, the situation which had in fact arisen. Those steps might be expected to differ according to the circumstances of each particular case. Without attempting to lay down any general proposition, where this difficulty arose, once it was discovered, the proceedings should continue as to both petitions; secondly, the difficulty must be resolved in the High Court, and thirdly, provided the parties brought the facts to the notice of the judge by affidavit, it would be for him in the first instance to decide what should be done. In the circumstances an immediate order would be made for transfer of the Colchester proceedings to London. Order accordingly.

APPEARANCES: *Raymond Walton* (*Cosmo Cran & Co.*); *Michael Wheeler* (*Hatchett, Jones & Co.*, for *Beaumont & Sansom*, Colchester).

[Reported by J. D. PENNINGTON, Esq., Barrister-at-Law] [1 W.L.R. 683

ADMINISTRATION OF ESTATES: PURCHASE MONEY UNPAID ON HOUSE: LIABILITY AS BETWEEN DEVISEE AND RESIDUARY LEGATEES

In re Birmingham, deceased; Savage and Another v. Stannard and Another

Upjohn, J. 13th May, 1958

Adjourned summons.

On 31st March, 1953, a testatrix contracted to buy a freehold house and paid a deposit on the signing of the contract, which incorporated cl. 32 (1) (2) and (3) of The Law Society's Conditions of Sale, 1934 and 1949, but she died before completion of the purchase. By a codicil executed after the signing of the contract the testatrix devised the house free of all duties to her daughter, the first defendant, and, by her will dated 8th September, 1952, gave her residuary estate to the second and third defendants. By arrangement between all parties the house was conveyed direct to the first defendant on 21st May, 1953. The executors took out a summons to determine how the balance of the purchase money should be borne as between the first defendant and the residuary legatees.

UPJOHN, J., said that it was argued on one side that s. 35 of the Administration of Estates Act, 1925, operated to charge the property at the date of the death of the testatrix with the balance of the purchase money. Counsel for the first defendant submitted that as the date of the death of the testatrix was before the date fixed for completion, the vendor had no lien on the estate for the balance; that the executors in paying the balance shortly after the testatrix's death were not discharging a charge, but were performing a contract. Counsel for the residuary legatees submitted that the charge for the purchase money arose the moment that the contract was signed. The nature of the charge or the remedies available might vary according to the state of the transaction, i.e., until the date fixed for completion, the vendor could not actively enforce his lien by action, but he had the right (subject always to the express terms of the contract) to remain in possession and to refuse to execute a conveyance until the purchase money was paid. After the date fixed for completion, then he had a right to enforce the charge or lien by appropriate proceedings in the courts. But that throughout, from the moment the contract was executed, the vendor had a charge for his unpaid purchase money. That argument was correct. Accordingly, s. 35 did apply unless the contrary intention was shown, because the charge for the unpaid balance of the purchase money arose on execution of the contract. So, if the law implied a charge on the property for unpaid purchase money, the daughter took subject to it, because the testatrix had not signified a contrary intention. The last matter was with regard to the solicitors' costs incurred in completing the purchase. The scale fees were some £56, added to which there were certain search fees and petty disbursements. The residue could only establish a case for throwing those costs on the property if they could show that those costs were in some way equitably charged on the property. No doubt, had the conveyance been completed in the lifetime of the testatrix, the solicitors would have received the deeds in the normal course, and would have had an equitable lien on those deeds for any costs remaining unpaid; but what was the position at the date of the testatrix's death? They were then doing work. No bill of costs had been rendered. Nothing at that time was due from the testatrix to her solicitors. They could have no lien on anything, for they had no deeds upon which they could hold their lien. It was somehow suggested they had some form of lien upon the contract. But it was their duty to carry through the contract to completion. At the relevant date these costs were not charged on anything. Accordingly, they must be borne by residue. Declaration accordingly.

APPEARANCES: *Michael Browne* (*Ridsdale & Son*, for *Somerville, Hinton & Savage*, Torquay); *Michael Bowles* (*Ranger, Burton & Frost*); *E. I. Goulding* (*Wilde, Sapte & Co.*).

[Reported by J. D. PENNINGTON, Esq., Barrister-at-Law] [3 W.L.R. 10

COMPANY: CAPITAL: REDUCTION: CONDITIONAL RESOLUTION THAT OPERATIONS NOT REQUIRING SANCTION PRECEDE OPERATION REQUIRING IT

In re Castiglione, Erskine & Co., Ltd.

Roxburgh, J. 19th May, 1958

Petition.

A petition for the confirmation of the reduction of the capital of a company from £25,000 to £4,750 was to be effected by:

(*a*) repaying to the preference shareholders the whole of the capital paid up thereon and cancelling such preference shares; (*b*) paying to holders of the 18,520 issued ordinary shares capital paid up thereon to the extent of 15s. per share thereby reducing the nominal value of such shares to 5s.; "and upon the foregoing reductions of capital taking effect" (*c*) sub-dividing each of the 480 unissued ordinary shares of £1 each in the capital of the company into 1,920 ordinary shares of 5s. each; and (*d*) cancelling and extinguishing 1,440 of the unissued ordinary shares of 5s. each resulting from the aforesaid sub-division; and (*e*) cancelling and extinguishing the 1,000 "A" shares numbered 1 to 1,000 both inclusive. Operations under (*a*), (*b*) and (*e*) required the sanction of the court under s. 68 of the Companies Act, 1948, those under (*c*) and (*d*) could be carried out under s. 61 of the Act without the sanction of the court.

ROXBURGH, J., said that the case at first sight appeared to raise a question whether the court could, and if it could, would, sanction a conditional reduction. That was what the language of the resolution suggested "upon the foregoing reductions of capital taking effect"; but closer analysis had led him to the conclusion that that was not really the point at all. The true effect of ss. 65 to 69 inclusive was that there was no reduction of capital until the registration of the approved minute, whereas, of course, a resolution (which was not subject to the reduction procedure) took effect as soon as it was passed unless it in itself contained some language putting off its operation. The resolution in (*e*), *qua* the cancellation of the issued shares, was misconceived, because the position was this: there was no reduction until the order and the minute were registered, and therefore, if this reduction was to take effect at all, it must take effect precisely at the same moment as the reductions provided for in (*a*) and (*b*). Therefore, (*e*), which related to the cancellation of the issued shares, should have followed (*b*) and preceded the words "and upon the foregoing reductions of capital taking effect," when the words became apposite and normal. That situation and how to deal with it was considered in *In re Salinas of Mexico* [1919] W.N. 311. He would sanction (*a*) and, (*b*) and, as the intention of the resolution plainly was that he should also sanction (*e*), he was not therefore going to put the company on this purely technical question to the expense of passing another resolution. But he attached importance to the correct procedure, and he was not sure that he should be so indulgent if this point occurred again. The cancellation of the unissued shares could be done under s. 61, but when it was part of a scheme of reduction which had to be sanctioned by the court, it was usual and convenient not to treat it as a separate matter being dealt with under s. 61 but as part of the general scheme of reduction. He hoped therefore, that in future that practice would be followed. There would have to be a special form of order and the minute must be brought into company chambers.

APPEARANCES: *J. G. Monroe* (*Linklaters and Paines*).

[Reported by MRS. IRENE G. R. MOSES, Barrister-at-Law] **[1 W.L.R. 688**

MORTGAGE: ATTORNMENT CLAUSE: WHETHER STATUTORY PERIOD OF NOTICE TO QUIT APPLICABLE TO MORTGAGEE

Alliance Building Society v. Pinwill

Vaisey, J. 23rd May, 1958

Adjourned summons.

The mortgagees claimed against the mortgagor delivery of possession of the mortgaged premises, which consisted of a dwelling-house, the mortgage being in the form of a legal charge and dated 1st November, 1950. The only possible defence to the claim was whether the attornment clause contained in the mortgage brought the case within s. 16 of the Rent Act, 1957. The attornment clause, so far as material, provided: "(1) The borrower hereby attorns tenant to the society of such part of the mortgaged property as now is or shall at any time during the continuance of this security . . . be in the occupation of the borrower at the yearly rent of a peppercorn if demanded. (2) Provided as follows—(i) that the society may at any time after their power of sale has become exercisable enter into and upon the mortgaged property . . . and determine the tenancy hereby created after giving to the borrower at least seven days' notice to quit . . ." By a written notice dated 7th January, 1958, the mortgagor being in default, the mortgagees gave him notice to quit the premises on 17th January, 1958; which was a notice longer than the seven days required in the attornment clause. The question was whether this notice to quit was invalid as contravening s. 16 of the Rent Act, 1957.

VAISEY, J., said that there was much authority to support the view that s. 16 was inapplicable: first, *Ex parte Isherwood* (1882), 22 Ch. D. 384, where the headnote was: "Notwithstanding the insertion of an attornment clause in a mortgage deed, the real relation between the parties was that, not of landlord and tenant, but of mortgagee and mortgagor." Then there were *Portman Building Society* v. *Young* [1951] 2 T.L.R. 369 and *Steyning & Littlehampton Building Society* v. *Wilson* [1951] Ch. 1018; it was held in the latter case that the Agricultural Holdings Act, 1948, could not have been intended to apply to anything other than true transactions between landlord and tenant and did not apply to tenancies arising by reason of an attornment clause. Section 16 of the Rent Act, 1957, protected a real tenant against a real landlord under a real "residential letting", and was not intended to and did not benefit a mortgagor to the detriment of his mortgagee. Although this decision might apply to many cases in which attornment clauses appeared in mortgages, it did not necessarily apply to all such cases; it might, for instance, be inapplicable where the rent reserved was not a peppercorn but a full rack-rent, or the terms of the mortgage obliged the mortgagor to reside personally on the premises. The mortgagees here were entitled to the order sought; the length of notice required was seven days under the mortgage and not four weeks under s. 16.

APPEARANCES: *John Mills* (*Boxall & Noxall*, for *Cardens*, Brighton); the mortgagor was not represented and did not appear.

[Reported by Mrs. IRENE G. R. MOSES, Barrister-at-Law] **[3 W.L.R. 1**

The Queen has been pleased, on the recommendation of the Lord Chancellor, to appoint Mr. JOHN HUXLEY BUZZARD to be Recorder of the Borough of Great Yarmouth, the Honourable JAMES ROUALEYN HOVELL-THURLOW-CUMMING-BRUCE to be Recorder of the City of York, and Mr. GERARD GUSTAVE LIND-SMITH to be Recorder of the Borough of Birkenhead. Mr. Hovell-Thurlow-Cumming-Bruce has relinquished his Recordership of Doncaster.

The following appointments are announced by the Colonial Office:—

Mr. J. W. D. AMBROSE, Official Assignee, Singapore, to be Puisne Judge, Singapore.

Mr. T. T. DICKIE, Senior Crown Counsel, Uganda, to be Legal Draftsman, Uganda.

Mr. T. J. GOULD, Senior Puisne Judge, Hong Kong, to be Justice of Appeal, Court of Appeal for Eastern Africa.

Mr. E. J. E. LAW, Assistant Judge, Zanzibar, to be Puisne Judge, Tanganyika.

Mr. M. J. STARFORTH, Crown Counsel, Uganda, to be Senior Crown Counsel, Uganda.

Mr. A. S. STAVRINIDES, District Judge, Cyprus, to be President, Compensation Assessment Tribunal, Cyprus.

Mr. H. E. DEVAUX to be Resident Magistrate, Northern Rhodesia.

Mr. C. H. GRANT to be Resident Magistrate, Kenya.

Mr. G. L. MCLOUGHLIN to be Resident Magistrate, Northern Rhodesia.

Mr. G. L. PIMM to be Resident Magistrate, Northern Rhodesia.

Mr. A. E. TAYLOR to be Crown Counsel, Tanganyika.

Mr. ARTHUR JOHN SELDON has been appointed an Assistant Official Receiver for the Bankruptcy District of the County Courts of Aberdare, Aberystwyth, Blackwood, Tredegar and Abertillery, Bridgend, Cardiff and Barry, Carmarthen, Haverfordwest, Merthyr Tydfil, Neath and Port Talbot, Newport (Mon.), Pontypridd, Ystradyfodwg and Porth, and Swansea, with effect from 6th June, 1958.

Mr. CYRIL FREDERICK HOWARD has been appointed an Assistant Official Receiver for the Bankruptcy District of the County Courts of Croydon, Guildford, Kingston upon Thames, Slough and Wandsworth with effect from 11th June, 1958.

BIRTHDAY LEGAL HONOURS

PRIVY COUNCILLOR

WILLIAM GRANT, Q.C., M.P., Solicitor-General for Scotland since January, 1955. Admitted to Faculty of Advocates, 1934, and took silk (Scotland) 1951.

KNIGHTS BACHELOR

ROGER SEWELL BACON, M.B.E., lately Justice of Appeal, East African Court of Appeal. Called by the Middle Temple, 1923.

KENNETH HAMILTON BAILEY, C.B.E., Solicitor-General to the Commonwealth of Australia and Secretary, Attorney-General's Department. Called by Gray's Inn, 1924.

The Honourable HENRY JOHN CLAYDEN, a Judge of the Federal Supreme Court, Federation of Rhodesia and Nyasaland. Called by the Inner Temple, 1926.

EDWARD JOHN DAVIES, Q.C., Chief Justice, Tanganyika. Called by Lincoln's Inn, 1922, and took silk (Singapore) 1948.

JAMES WILLIAM FRANCIS HILL, C.B.E. For services to the Association of Municipal Corporations. Admitted 1926.

FRISTON CHARLES HOW, C.B., Secretary, Atomic Energy Office. Called by the Middle Temple, 1927.

OLUMUYIWA JIBOWU, Chief Justice of the High Courts of Lagos and Southern Cameroons, Federation of Nigeria. Called by the Middle Temple, 1923.

Alderman RONALD BARRY KEEFE. Admitted 1924.

The Honourable JOHN MURRAY MURRAY, Chief Justice of Southern Rhodesia. Advocate of the Supreme Court of South Africa, 1914.

The Honourable NORMAN O'BRYAN, a Judge of the Supreme Court, State of Victoria.

JOHN WATT SENTER, Q.C. Called by the Middle Temple, 1928, and took silk 1953.

GERALD WILLS, M.B.E., M.P., Comptroller of Her Majesty's Household since 1957. Called by the Middle Temple, 1932.

IAN DAVID YEAMAN, President, The Law Society, 1957–58. Admitted 1911.

ORDER OF THE BATH

C.B.

JAMES LAWRENCE GIRLING, lately Comptroller-General, Patent Office and Industrial Property Department, Board of Trade. Called by Gray's Inn, 1950.

ORDER OF THE BRITISH EMPIRE

C.B.E.

THOMAS ALKER, Town Clerk of Liverpool. Admitted 1938.

*WILLIAM WHYTEHEAD BOULTON, T.D., Secretary to the General Council of the Bar. Called by the Inner Temple, 1936.

STANLEY GEORGE GAINS, Assistant Solicitor, Office of H.M. Procurator General and Treasury Solicitor. Admitted 1924.

RICHARD LEOFRIC JACKSON, Assistant Commissioner, Metropolitan Police. Called by the Middle Temple, 1927.

HAROLD STEWART KIRKALDY, Chairman of Wages Boards and Councils, Professor of Industrial Relations, University of Cambridge. Called by the Middle Temple, 1928.

Alderman JOHN BARKER MAUDSLEY. Admitted 1929.

EVAN AUGUSTUS NORTON, Chairman, United Birmingham Hospitals. Admitted 1926.

Major JOHN MARTIN OAKEY, M.C., D.L. Called by Lincoln's Inn, 1913.

FRANCIS BERTRAM REECE, lately Chairman, Poisons Board, Home Office. Called by the Inner Temple, 1914.

FRED WILLIAMSON, O.B.E., Chairman of the Traffic Commissioners for Public Service Vehicles, North Western Traffic Area.

O.B.E.

Lieutenant-Colonel PHILIP JOHN ROPER, T.D. Admitted 1947.

HARRY SAMUELS, Standing Counsel, Industrial Welfare Society. Called by the Middle Temple, 1923.

HUMPHREY BROOKE WORTHINGTON, Chief Administrative Officer, Public Trustee Office. Called by Gray's Inn, 1927.

M.B.E.

ALEXANDER LAURISTON, Chairman, National Assistance Appeal Tribunal, Middlesbrough, Stockton-on-Tees and Hartlepool area. Admitted 1908.

WILLIAM HENRY REDMAN, First Class Clerk, Central Office, Supreme Court of Judicature.

SYLVANUS AKINROKUM SAMUEL, Senior Registrar, Supreme Court, Federation of Nigeria.

GEORGE ALBERT WILLIAM TERRING, Assistant Official Receiver, Board of Trade.

EDWARD ATKINSON WILLIAMS. Admitted 1933.

* We regret that in our Current Topic, at p. 423, *ante*, Mr. Boulton's name was inadvertently misspelt.

OBITUARY

MR. C. D. ASHWORTH

Mr. Charles David Ashworth, solicitor, of Booth Street, Manchester, died on 12th June, aged 24. He was admitted in 1956.

MR. L. F. ATTWATER

Mr. Leslie Frank Attwater, solicitor, of Orpington, Kent, died on 23rd May. He was admitted in 1919.

MR. R. C. BARTLETT

Mr. Reuben Charles Bartlett, solicitor, of John Street, Bedford Row, London, W.C.1, died on 9th June, aged 74. He was admitted in 1911.

MR. J. W. BOWKER

Mr. John Weldon Bowker, solicitor, of Whittlesey, Cambridgeshire, died on 10th June, aged 74. He was admitted in 1907.

MR. H. C. F. M. FILLMORE

Mr. Howard Charles Fred Millard Fillmore, town clerk of Warwick from 1932 until his retirement in 1956, died on 9th June. Admitted in 1927, he had served as legal assistant to the town clerk of Worcester and as deputy town clerk of Bury before going to Warwick.

MR. E. J. FOLKES

Mr. Edward J. Folkes, for thirty-three years managing clerk to Messrs Paine and Brettell, of Chertsey, Surrey, died on 1st June.

MR. C. N. TWEED

Mr. Cyril Neville Tweed, solicitor, of Honiton, died on 25th May. He was admitted in 1899.

MR. A. C. F. WINDEATT

Mr. Arthur Cull Fabyan Windeatt, solicitor, of Plymouth, died on 12th June, aged 57. He was admitted in 1923.

MR. E. J. WINTER

Mr. Ernest James Winter, solicitor, of Reading, died on 11th May, aged 65. He was admitted in 1925.

IN WESTMINSTER AND WHITEHALL

HOUSE OF LORDS

A. Progress of Bills

Read First Time:—

Licensing of Bulls and Boars Bill [H.L.] [12th June.

To vary the grounds for the refusal of licences under the Improvement of Live Stock (Licensing of Bulls) Act, 1931, for keeping bulls or boars for breeding purposes.

Read Second Time:—

Domicile Bill [H.C.] [12th June.
Local Government Bill [H.C.] [10th June.
Pier and Harbour Provisional Order (Margate) Bill [H.C.] [12th June.
Variation of Trusts Bill [H.C.] [12th June.

Read Third Time:—

Ashton-under-Lyne, Stalybridge and Dukinfield (District) Water Works Bill [H.L.] [10th June.
Holy Trinity Hounslow Bill [H.C.] [11th June.
Rochdale Corporation Bill [H.L.] [10th June.
Royal Society for the Prevention of Cruelty to Animals Bill [H.C.] [11th June.

In Committee:—

Divorce (Insanity and Desertion) Bill [H.L.] [12th June.

B. Questions

Legal Advice

The Lord Chancellor said that The Law Society had recently placed before him certain proposals for implementing s. 7 of the Legal Aid and Advice Act, 1949, and the Law Society of Scotland had informed the Secretary of State for Scotland that they would be prepared to consider similar arrangements for implementing s. 7 of the Legal Aid (Scotland) Act, 1949. Those proposals provided, in substance, for the giving of oral advice by solicitors in ordinary practice for a fee paid out of the Legal Aid Fund. It appears to the Government that a scheme of that kind would be more satisfactory in many respects than the employment of salaried legal advisers, and they were prepared to adopt it. If, as they hoped, sufficient solicitors indicated their willingness to undertake the work, it was intended to bring s. 7 of the two Acts into force towards the end of the present financial year. He expected to follow that by bringing s. 5, the remaining section dealing with legal advice, into force later in the next financial year. [12th June.

HOUSE OF COMMONS

Progress of Bills

Read Second Time:—

All Hallows the Great Churchyard Bill [H.L.] [10th June.
All Hallows the Less Churchyard Bill [H.L.] [10th June.
Bradford Corporation (Trolley Vehicles) Provisional Order Bill [H.C.] [11th June.
Costs of Leases Bill [H.C.] [13th June.
Maidstone Corporation (Trolley Vehicles) Provisional Order Bill [H.C.] [11th June.
Medical Act, 1956 (Amendment) Bill [H.C.] [13th June.

To amend the provisions of the Medical Act, 1956, relating to the experience required for full registration and to applications for provisional registration, and of the First Schedule to that Act relating to fees, expenses and allowances.

Pier and Harbour Provisional Order (Great Yarmouth) Bill [H.C.] [11th June.
Pier and Harbour Provisional Order (King's Lynn Conservancy) Bill [H.C.] [11th June.
Pier and Harbour Provisional Order (Sheerness) Bill [H.C.] [11th June.

Read Third Time:—

Blackpool Corporation Bill [H.L.] [10th June.
Penybont Main Sewerage Bill [H.C.] [13th June.
Seaham Harbour Dock Bill [H.L.] [10th June.

In Committee:—

Finance Bill [H.C.] [12th June.

STATUTORY INSTRUMENTS

Birmingham Municipal Bank Order, 1958. (S.I. 1958 No. 923.) 5d.
British Sugar Corporation Limited (Incentive Agreement) Order, 1958. (S.I. 1958 No. 936.) 7d.
Companies Liquidation Account (Interest) Order, 1958. (S.I. 1958 No. 932.) 4d.
County of Kent (Prevention of Pollution) Order, 1958. (S.I. 1958 No. 937.) 4d.
East Africa (High Commission) (Amendment) Order in Council, 1958. (S.I. 1958 No. 917.) 5d.
East African Territories (Air Transport) (Amendment) Order in Council, 1958. (S.I. 1958 No. 916.) 4d.
Draft **Furniture Industry** Development Council (Amendment) Order, 1958. 4d.
Local Government (Conferences) (Scotland) Regulations, 1958. (S.I. 1958 No. 933 (S.42).) 4d.
London–Carlisle–Glasgow–Inverness Trunk Road (South Mimms By-Pass) Order, 1958. (S.I. 1958 No. 905.) 5d.
London–Folkestone–Dover Trunk Road (High Street and other Streets, Ashford, Detrunking) Order, 1958. (S.I. 1958 No. 910.) 5d.
London Traffic (Prescribed Routes) (Stepney) (Revocation) Regulations, 1958. (S.I. 1958 No. 927.) 4d.
London Traffic (Prescribed Routes) (West Ham) Regulations, 1958. (S.I. 1958 No. 928.)
London Traffic (Weight Restriction) (Surrey) Regulations, 1958. (S.I. 1958 No. 929.) 5d.
National Health Service (Employers of Mariners Contributions) Amendment Regulations, 1958. (S.I. 1958 No. 924.) 4d.
Nigeria (Electoral Provisions) Order in Council, 1958. (S.I. 1958 No. 915.) 5d.
Public Service Vehicles (Equipment and Use) Regulations, 1958. (S.I. 1958 No. 926.) 7d.
Stopping up of Highways (City and County Borough of Bath) (No. 1) Order, 1958. (S.I. 1958 No. 902.) 5d.
Stopping up of Highways (County of Chester) (No. 6) Order, 1958. (S.I. 1958 No. 900.) 5d.
Stopping up of Highways (County of Durham) (No. 8) Order, 1958. (S.I. 1958 No. 918.) 5d.
Stopping up of Highways (County of Glamorgan) (No. 3) Order, 1958. (S.I. 1958 No. 914.) 5d.
Stopping up of Highways (London) (No. 23) Order, 1958. (S.I. 1958 No. 919.) 5d.
Stopping up of Highways (County of Norfolk) (No. 2) Order, 1958. (S.I. 1958 No. 911.) 5d.
Stopping up of Highways (County of Warwick) (No. 3) Order, 1958. (S.I. 1958 No. 903.) 5d.
Stopping up of Highways (County of Wilts) (No. 2) Order, 1958. (S.I. 1958 No. 901.) 5d.
Stopping up of Highways (County of Worcester) (No. 10) Order, 1958. (S.I. 1958 No. 904.) 5d.
Wages Regulation (Laundry) Order, 1958. (S.I. 1958 No. 907.) 7d.
Wages Regulation (Retail Bookselling and Stationery) (Amendment) Order, 1958. (S.I. 1958 No. 908.) 5d.
Wages Regulation (Retail Bread and Flour Confectionery) (Scotland) (Amendment) Order, 1958. (S.I. 1958 No. 909.) 5d.

[Any of the above may be obtained from the Government Sales Department, The Solicitors' Law Stationery Society, Ltd., Oyez House, Breams Buildings, Fetter Lane, London, E.C.4. Prices stated are inclusive of postage.

Mr. E. J. G. Higham, retired solicitor, of Bristol, left £45,112 (£23,526 net).

Mr. K. H. Nalder, solicitor, of Kingsway, London, W.C.2, left £29,914.

NOTES AND NEWS

Personal Note

Mr. James A. Sutcliffe, clerk to Halifax magistrates for fourteen years, has resigned.

Miscellaneous

The annual general meeting of the Bar will be held in the Middle Temple Hall on Monday, 14th July, 1958, at 4.30 p.m. The Attorney-General will preside.

DEVELOPMENT PLANS

Surrey Development Plan

On 1st May, 1958, the Minister of Housing and Local Government approved with modifications the above development plan. Certified copies of the plan as approved by the Minister have been deposited at the County Record Office, County Hall, Kingston upon Thames, the County Planning Department, Elmhurst, Penrhyn Road, Kingston upon Thames, and at the places mentioned below :—

County District	*Place of Deposit*
Bagshot Rural District	Council Offices, Bagshot.
Banstead Urban District	The Council House, Brighton Road, Banstead.
Barnes Borough	Municipal Offices, Sheen Lane, East Sheen, S.W.14.
Beddington and Wallington Borough	Town Hall, Wallington.
Carshalton Urban District	Council Offices, The Grove, Carshalton.
Caterham and Warlingham Urban District	Council Offices, Caterham.
Chertsey Urban District	Council Offices, Chertsey.
Coulsdon and Purley Urban District	Council Offices, Brighton Road, Purley.
Dorking Urban District	Council Offices, Pippbrook, Dorking.
Dorking and Horley Rural District	(1) Council Offices, Chalkpit Lane, Dorking. (2) Council Offices, Massetts Road, Horley.
Egham Urban District	Engineer and Surveyor's Office, Fire Station Buildings, High Street, Egham.
Epsom and Ewell Borough	Town Hall, The Parade, Epsom.
Esher Urban District	Council Offices, Portsmouth Road, Esher.
Farnham Urban District	Council Offices, Farnham.
Frimley and Camberley Urban District	Municipal Buildings, Camberley.
Godalming Borough	Municipal Buildings, Bridge Street, Godalming.
Godstone Rural District	Council Offices, Oxted.
Guildford Borough	Municipal Offices, High Street, Guildford.
Guildford Rural District	Millmead House, Millmead Lane, Guildford.
Hambledon Rural District	Council Offices, Bury Fields, Guildford.
Haslemere Urban District	Council Offices, Museum Hill, Haslemere.
Kingston Borough	The Guildhall, Kingston-upon-Thames.
Leatherhead Urban District	Council Offices, Leatherhead.
Malden and Coombe Borough	Municipal Offices, Malden Road, New Malden.
Merton and Morden Urban District	Morden Hall, Merton, S.W.19.
Mitcham Borough	Town Hall, Mitcham.
Reigate Borough	Town Hall, Reigate.
Richmond Borough	Town Hall, Richmond.
Surbiton Borough	Council Offices, Ewell Road, Surbiton.
Sutton and Cheam Borough	Municipal Offices, Sutton.
Walton and Weybridge Urban District	Council Offices, Hersham Road, Walton-on-Thames.
Wimbledon Borough	Town Hall, Wimbledon, S.W.19.
Woking Urban District	Council Offices, Woking.

The copies of the plan so deposited will be open to inspection free of charge by all persons interested between the hours of 10 a.m. and 4.30 p.m., Mondays to Fridays (except between the hours of 1 p.m. and 2.15 p.m. at the offices of the Caterham and Warlingham Urban District Council, 1 p.m. and 2 p.m. at the offices of the Chertsey Urban District Council and the Bagshot Rural District Council, 12.30 p.m. and 1.30 p.m. at the offices of the Guildford Rural District Council and 12.30 p.m. and 1.45 p.m. at the offices of the Hambledon Rural District Council), and between the hours of 9.30 and 11.30 a.m. on Saturdays (except at the offices of the Kingston Borough Council). The plan is operative as from 6th June, 1958, but if any person aggrieved by the plan desires to question the validity thereof or of any provision contained therein on the ground that it is not within the powers of the Town and Country Planning Act, 1947, or on the ground that any requirement of the Act or any regulation made thereunder has not been complied with in relation to the approval of the plan, he may, within six weeks from 6th June, 1958, make application to the High Court.

Stockport Development Plan

The Minister of Housing and Local Government has approved with modifications the development plan for the County Borough of Stockport. The plan, as approved, will be deposited in the Town Hall, Stockport, for inspection by the public.

SOCIETIES

LONDON SOLICITORS AND FAMILIES ASSOCIATION

The one hundred and forty-first annual general court of the London Solicitors and Families Association (formerly The Law Association) was held at 60 Carey Street, W.C.2, on Tuesday, 3rd June, when Mr. G. D. Hugh-Jones (Treasurer) presided in the enforced absence of Mr. John Venning (President).

In presenting the report of the directors and the statement of accounts for the year ended 5th April, Mr. Hugh-Jones referred first to the breakdown of negotiations for amalgamation of the old Law Association (as it then was) with the Solicitors' Benevolent Association. "I want," he said, "to dispel the idea, if such an idea be abroad, that there is any reluctance among the directors of our association to such an amalgamation. If we could have found a way which would have been satisfactory to both parties and in the interests of both sets of beneficiaries, we should have been delighted. Since 1870 efforts have been made to bring about such an amalgamation, and when Mr. Morton retired from his position as secretary before the appointment of our present secretary, I myself suggested that we might be able to work more closely with the Solicitors' Benevolent Association if their secretary (then Miss Passmore) could also act as our secretary. It was, however, felt, largely by Miss Passmore herself, that such an arrangement might lead to some confusion, and it was agreed to drop this suggestion, but we are very anxious that the two associations shall act in close co-operation and, in fact, we do so act. Our two secretaries get on admirably together, and on occasions they go together to see beneficiaries or applicants whose cases need particularly careful investigation, and so the two boards have the benefit of their unanimous recommendations in dealing with these cases."

In appealing for members to undertake recruiting in an endeavour to bring the total membership from 1,181 to a round 1,300 by the end of this financial year, Mr. Hugh-Jones assured the court that every case which comes before the board of directors is given the most careful and sympathetic consideration, and that every penny that is contributed by the members is most carefully spent.

Mr. Hugh-Jones drew the attention of the court to the appeal set out in the report, for the combined Christmas and Children's Holiday Fund. He expressed his gratitude for the generous donations that had already come in from a few members, but stressed that their numbers at present were far too few and there was a great need for many more contributions if the fund was to reach its target of at least £200 per annum.

At the board meeting which followed the court ten directors undertook to underwrite any possible deficit below £200 received for this fund during the present year, and it is hoped that this sporting gesture will appeal to many members who will be kind enough to do what they can to reduce the liability which these gentlemen have thus shouldered. It may be of interest to readers to know that the secretary has received one or two offers of seven-year covenants additional to the ordinary general-fund subscriptions, to be earmarked specifically for this fund, which is, of course, of great value in forming a nucleus of a regular income that can be counted upon. The Christmas gifts both in cash and in kind and the contributions towards summer holidays for the dependent children of beneficiaries are details of the personal work which is so very greatly appreciated by recipients.

Copies of the current annual report and a new booklet setting forth the association's byelaws can be obtained from the secretary, L.S. & F.A., 25 Queensmere Road, S.W.19. Telephone No. Wimbledon 4107.

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Contributions are cordially invited and should be accompanied by the name and address of the author (not necessarily for publication).